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In re Application of:
Raymond J. Kelley et al.

Serial No.: 09/747,661

Filed: December 22, 2000

For: MEDICAL IMAGING SYSTEM
ENHANCEMENT
PERFORMANCE TOOL

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Group Art Unit: 3626

Examiner: Morgan, Robert W.

Atty. Docket: GEMS:0120/YOD/SWA/EUB
15-EC-5771

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May 5, 2006 Date	 Stephanie Shangar

Sir:

REPLY BRIEF PURSUANT TO 37 C.F.R. §§ 41.31 and 41.41

Appellants submit this Reply Brief pursuant to 37 C.F.R. §§ 41.31 and 41.41 and in response to the Examiner's Answer mailed on March 7, 2006. Specifically, this Reply Brief addresses the Examiner's response to argument section, which begins on page 12 of the Examiner's Answer. Appellants respectfully request that the Board consider Appellants' complete arguments set forth in the previously filed Appeal Brief along with the following remarks.

REMARKS

Referring generally to the Examiner's "Response to Arguments" on pages 12-18 of the Examiner's Answer, Appellants respectfully submit that the Examiner has still failed to present a *prima facie* case of obviousness with regard to claims 1-53 of the present application. As stressed throughout the Appeal Brief, the Crane (U.S. Patent No. 5,748,907), Powers et al. (U.S. Patent No. 6,604,084), Wong et al. (U.S. Patent No. 6,260,021, and Kenner et al. (U.S. Patent No. 6,314,565) references, taken alone or in hypothetical combination, fail to teach or suggest a number of features found in the instant claims. In addition, the Examiner has not shown the requisite objective evidence of a motivation or suggestion to combine these disparate references.

Deficiencies of the Rejections

Regarding the cited references, the Crane reference is directed to addressing common logistical problems in the healthcare service industry by providing a fully automatic management system for medical facilities. Crane reference, col. 6, lines 42-45. The Crane et al. system automatically manages, for instance, patient and employee flow, scheduling of appointments, invoicing, occupancy of rooms in a facility, and other such *clerical* details. *Id.* at col. 6, lines 45-47; *see also* FIG. 1. The Powers et al. reference generally teaches a system for evaluating individual employees, groups of employees, and practices of a business. Powers et al. reference, col. 2, lines 52-57. The Powers et al. system includes tables 86 that include questions for generating performance evaluations of such employees. *See id.* at col. 8, line 61 – col. 9, line 27. Exemplary questions taught by the Powers et al. reference include: "How often does the agent work on the originally assigned shift?" and "How often is the agent late for work?" *See id.* Further, the Wong et al. reference teaches a picture archiving and communication system (PAC), i.e., a computer system for storing and transmitting *image* data. Wong et al. reference, col. 1, lines 21-38. Finally, the Kenner et al. reference is directed to automatically updating software stored on a computer over a network. *See, e.g.,* Kenner et al. reference, Abstract.

In the Examiner's Answer, the Examiner asserts that he has established a *prima facie* case of obviousness by presenting evidence of corresponding claim elements in the prior art and expressly articulating the combinations and motivations that fairly suggest Appellants' claimed invention. See Examiner's Answer, page 14, lines 1-5. Appellants respectfully note that the Examiner has, in fact, failed to meet either of these requirements.

First, Appellants note that claim 1, for instance, recites:

A method for analyzing productivity of a medical resource, the method comprising:

electronically directing client data transmitted from a remote interface to a productivity analysis system via a network, wherein the productivity analysis system is configured to evaluate a plurality of medical resources associated with at least one of a plurality of medical system modalities, the client data comprising operational data relating to a medical system employed at a medical facility, the medical system comprising a medical diagnostic system;

analyzing the client data with the productivity analysis system; and

providing a productivity analysis report to a client via the network, the productivity analysis report allowing the client to evaluate medical resource productivity at the medical facility.

Emphasis added. Applicants respectfully submit, and one skilled in the art would readily appreciate, that in order to provide a productivity analysis report with respect to medical resource productivity, the recited client data must be capable of being analyzed to determine such productivity of the medical resource. In the present rejection, the Examiner relies on the Crane and Wong et al. references as teaching such data. While Appellants' readily concede that each of these references contain "data" in a general sense, neither of these references teach data that could be reasonably equated with the recited operational data of the present claim. Particularly, neither the *clerical* data taught by Crane, nor the *image*-associated data taught by Wong et al., can be reasonably analyzed to determine the productivity of a medical resource. In the present case, the Examiner's rejection is based on a reading of the claim terms in isolation from one

another, without consideration of how such terms relate to one another and to each claim as a whole. Appellants respectfully submit that interpreting individual elements of each claim in such a vacuum, or entirely ignoring the specification and the recitations of the claim as a whole, is improper.

Furthermore, in determining the differences between the prior art and the claims, the question under Section 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See Stratoflex, Inc. v. Aeroquip Corp.*, 218 U.S.P.Q. 871 (Fed. Cir. 1983). Thus, the Examiner must not look at each element of a claim individually, but rather the claims should be viewed as a tapestry comprising the recited elements. Moreover, “it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, *using the applicant’s structure as a template* and selecting elements from references to fill the gaps.” *In re Gorman*, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991) (emphasis added).

In the present case, the Examiner has not presented a cogent line of reasoning as to: (1) how the cited references render the claimed invention obvious or (2) why one skilled in the art, upon viewing only the collective teachings of the cited references, would have found it obvious to *selectively* pick and choose various elements or concepts from the several references relied upon to arrive at the claimed invention. *See Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985); *In re Horn*, 203 U.S.P.Q. 969 (C.C.P.A. 1979). Instead, the Examiner has merely relied on unsupported conclusory statements that are essentially based on no more than a belief that adding things together is good.

For example, the Examiner’s rationale for combining the management/scheduling system of Crane with the evaluation system of Powers et al. is that one skilled in the art would make such a combination “to obtain an improved performance evaluation system that can be automatically be generated [*sic*, the evaluations can be automatically generated] for disparate groups and different performance areas.” Office Action mailed

October 6, 2004, page 3, lines 13-16 (incorporated by reference into the Office Action mailed April 26, 2005). Appellants note that this supposed motivation to combine is nothing more than a paraphrase of a passage in the Powers et al. reference that discusses advantages of the Powers et al. invention. *See* Powers et al. reference, col. 2, lines 5-12. Indeed, the Examiner's position is *nothing more than a truism* that combining "Element A" with "Element B" results in a combination that has "Element B" (and the properties thereof). Further, it is clear from the Powers et al. reference itself that the disclosed evaluation system provides the functionality noted by the Examiner, and that one does not need to combine the evaluation system with any other system to realize that functionality. In short, while the Examiner has identified a passage of the Powers et al. reference which notes the purported advantages of the Powers et al. system, the Examiner has not provided any evidence or rationale as to why one skilled in the art would be motivated to *combine* the specific teachings of the Crane and Powers et al. systems relied on in the present rejection.

Similarly, with respect to combining the PAC system of Wong et al. with the management system of Crane and the evaluation system of Powers et al., the Examiner stated that one skilled in the art would have been motivated to make such a combination for "enabling uniform access to and ready distribution of medical images and associated records in electronic form via a network." Office Action mailed April 26, 2005, page 3, lines 18-21. Again, this assertion merely parrots the functionality asserted by Wong et al. with respect to their invention. *See* Wong et al. reference, col. 1, lines 6-11. However, Appellants respectfully note that the PAC system of Wong et al., the management system of Crane, and the evaluation system of Powers et al. are all fully capable of operation independent from one another, and there is nothing to suggest that the combination of these disparate systems provides some benefit that is unrealized by the individual systems themselves. The Examiner has failed to meet his burden in establishing a logical and coherent motivation to *combine* the disparate teachings of the cited references and, in fact, has failed to provide *any* actual objective evidence as to why one skilled in the art would be motivated to combine any of the Crane, Powers et al., or Wong et al. systems.

Appellants also respectfully note that the Examiner's alleged motivation to combine a particular teaching of the Kenner et al. reference with the specific elements the Examiner individually extracted from the Crane and Powers et al. references is equally deficient for the same reasons provided above. *See* Office Action mailed October 6, 2004, page 15, lines 11-15; Kenner et al. reference, col. 4, lines 54-63.

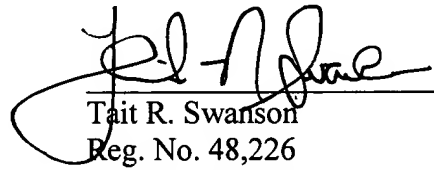
Accordingly, the Examiner has, at best, employed impermissible hindsight reconstruction to reject the instant claims. That is, it appears that the Examiner has used the structure of Appellants' invention as a basis from which to selectively pick and choose various elements of the disparate cited references in an attempt to cobble together obviousness rejections of independent claims 1, 19, 31, and 41. This hindsight reconstruction is improper, the Examiner has failed to provide any logical rationale as to why one skilled in the art would be motivated to combine particular elements of the cited references, and the present obviousness rejections of the instant claims cannot stand.

Conclusion

In closing, Appellants remind the Board that the Examiner bears the burden of establishing a *prima facie* case of obviousness. With that in mind, Appellants respectfully assert that the foregoing remarks, along with the previously filed Appeal Brief, clearly establish that the Examiner has failed to satisfy the proper evidentiary thresholds. Accordingly, Appellants respectfully assert that independent claims 1, 19, 31, and 41 and their dependent claims are patentable over the cited references and in condition for allowance. As such, Appellants respectfully request that the Board overturn the improper rejections and direct the Examiner to allow these claims.

Respectfully submitted,

Date: May 5, 2006



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